



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R03-OAR-2015-0175; FRL- 9926-70-Region 3]**

#### **Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Determination of Attainment of the 2006 24-Hour Fine Particulate Standard for the Liberty-Clairton Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to make a determination of attainment regarding the Liberty-Clairton, Pennsylvania 2006 24-hour fine particulate matter (PM<sub>2.5</sub>) nonattainment area (hereafter “Liberty-Clairton Area” or “the Area”). EPA is proposing to determine that the Liberty-Clairton Area has attained the 2006 24-hour PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS), based upon quality-assured, quality-controlled and certified ambient air monitoring data for the calendar years 2012-2014. If EPA finalizes this “clean data determination,” the requirement for the Liberty-Clairton Area to submit an attainment demonstration, reasonably available control measures (RACM), reasonable further progress (RFP), and contingency measures related to attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS would be suspended for so long as the Area continues to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS. If finalized, this determination will not constitute a redesignation to attainment. This proposed action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[insert date 30 days from date of publication]**.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2015-0175 by one of the following methods:

- A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- B. E-mail: powers.marilyn@epa.gov.
- C. Mail: EPA-R03-OAR-2015-0175, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2015-0175. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of

the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

***Docket:*** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** Emlyn Vélez-Rosa, (215) 814-2038, or by e-mail at [velez-rosa.emlyn@epa.gov](mailto:velez-rosa.emlyn@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Summary of Proposed Actions**

EPA is proposing to make a determination that the Liberty-Clairton Area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS. This proposed “clean data determination” is based upon quality assured and certified ambient air monitoring data that show the area has monitored attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS for the 2012-2014 monitoring period. If EPA finalizes this determination, the requirement for the Liberty-Clairton Area to submit an attainment

demonstration, RACM, RFP, and contingency measures related to attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS shall be suspended for so long as the area continues to attain that NAAQS. However, if finalized, this determination of attainment will not suspend Pennsylvania's other required statutory obligations including requirements for an emissions inventory and preconstruction permitting program for the Liberty-Clairton Area for the 2006 24-hour PM<sub>2.5</sub> NAAQS. This final determination will not constitute a redesignation to attainment. The Liberty-Clairton Area will remain designated nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS until such time as EPA determines that the Liberty-Clairton Area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan under section 175A.

## **II. Background**

### **A. PM<sub>2.5</sub> NAAQS History**

On July 16, 1997, EPA established an annual PM<sub>2.5</sub> NAAQS at 15.0 micrograms per cubic meter (µg/m<sup>3</sup>) (hereafter referred to as "the 1997 annual PM<sub>2.5</sub> NAAQS"), based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations (62 FR 38652, July 18, 1997). At that time, EPA also established a 24-hour standard of 65 µg/m<sup>3</sup> (hereafter referred to as "the 1997 24-hour PM<sub>2.5</sub> NAAQS"). *See* 40 CFR 50.7. The 1997 PM<sub>2.5</sub> NAAQS were based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. On January 5, 2005 (70 FR 944), EPA published its nonattainment area designations for the 1997 annual PM<sub>2.5</sub> NAAQS based upon air quality

monitoring data for calendar years 2001-2003. These designations, effective on April 5, 2005, included the Liberty-Clairton Area as a nonattainment area for the 1997 annual PM<sub>2.5</sub> NAAQS. The Liberty-Clairton Area is comprised of the following portion of Allegheny County: the boroughs of Lincoln, Glassport, Liberty, and Port Vue and the City of Clairton. *See* 40 CFR 81.339 (Pennsylvania). The Liberty-Clairton Area is surrounded by, but separate and distinct from, the Pittsburgh-Beaver Valley PM<sub>2.5</sub> nonattainment area.<sup>1</sup>

On September 21, 2006, EPA retained the 1997 annual PM<sub>2.5</sub> NAAQS at 15.0 µg/m<sup>3</sup> (hereby “the 2006 annual PM<sub>2.5</sub> NAAQS”) based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations, and promulgated a new 24-hour standard of 35 µg/m<sup>3</sup> based on a 3-year average of the 98th percentile of 24-hour concentrations (71 FR 61144, October 17, 2006). The revised 2006 24-hour PM<sub>2.5</sub> standard (hereafter “the 2006 24-hour PM<sub>2.5</sub> NAAQS”) became effective on December 18, 2006. *See* 40 CFR 50.13. The more stringent 2006 24-hour PM<sub>2.5</sub> NAAQS is based on significant evidence and numerous health studies demonstrating that serious health effects are associated with short-term exposures to PM<sub>2.5</sub> at this level.

Many petitioners challenged aspects of EPA’s 2006 revisions to the PM<sub>2.5</sub> NAAQS. *See American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009). As a result of this challenge, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded the 2006 annual PM<sub>2.5</sub> NAAQS to EPA for further proceedings. The 2006 24-hour PM<sub>2.5</sub> NAAQS was not affected by the remand and remains in effect.

---

<sup>1</sup> EPA previously made a determination of attainment for the Liberty-Clairton Area for the 1997 PM<sub>2.5</sub> NAAQS. 78 FR 63881 (October 25, 2013).

On November 13, 2009, EPA published designations for the 2006 24-hour PM<sub>2.5</sub> NAAQS (74 FR 58688), which became effective on December 14, 2009. In that action, EPA designated the Liberty-Clairton Area as nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS, retaining the same geographical boundaries as for the 1997 annual PM<sub>2.5</sub> NAAQS.

A nonattainment designation under the CAA triggers additional planning requirements for states to show attainment of the NAAQS in the nonattainment areas by a statutory attainment date, as specified in the CAA. Since 2005, EPA had implemented the 1997 and 2006 PM<sub>2.5</sub> NAAQS based on the general implementation provisions of subpart 1 of Part D of Title I of the CAA (subpart 1). On January 4, 2013, in *Natural Resources Defense Council v. EPA (NRDC v. EPA)*, the D.C. Circuit determined that EPA should be implementing its PM<sub>2.5</sub> pollution standard under additional CAA requirements than those EPA had been following in subpart 1 and remanded to EPA the “Final Clean Air Fine Particle Implementation Rule” (1997 PM<sub>2.5</sub> Implementation Rule) (72 FR 20586, April 25, 2007) and the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)” final rule (2008 NSR PM<sub>2.5</sub> Rule).<sup>2</sup> 706 F.3d 428 (D.C. Cir. 2013). The D.C. Circuit found that the EPA erred in implementing the 1997 PM<sub>2.5</sub> NAAQS solely pursuant to subpart 1, without consideration of the particulate matter specific provisions of subpart 4 of Part D of Title I of the CAA (subpart 4).

Although the D.C. Circuit declined to establish a deadline for EPA’s response, EPA intends to respond promptly to the court’s remand and to promulgate new generally applicable

---

<sup>2</sup> EPA’s 2008 NSR PM<sub>2.5</sub> Rule relates to requirements for the NSR permitting program required by parts C and D of title I of the CAA. The details and provisions of the 2008 NSR PM<sub>2.5</sub> Rule are not relevant to this proposed rulemaking.

implementation regulations for the PM<sub>2.5</sub> NAAQS in accordance with the requirements of subparts 1 and 4. In the interim, however, states and EPA still need to proceed with implementation of the PM<sub>2.5</sub> NAAQS in a timely and effective fashion in order to meet statutory obligations under the CAA and to assure the protection of public health intended by those NAAQS.

While the regulatory provisions of EPA's 1997 PM<sub>2.5</sub> Implementation Rule do not explicitly apply to the 2006 24-hour PM<sub>2.5</sub> NAAQS, EPA's underlying statutory interpretation has been the same for both standards. On March 2, 2012, EPA provided implementation guidance for the 2006 24-hour PM<sub>2.5</sub> NAAQS which reaffirmed and continued the framework and policy approaches of the 1997 PM<sub>2.5</sub> Implementation Rule.<sup>3</sup> Thus, EPA believes that the Clean Data Policy provisions within the 1997 PM<sub>2.5</sub> Implementation Rule are also applicable to the 2006 24-hour PM<sub>2.5</sub> NAAQS. *See* 78 FR 49403 (August 14, 2013) (proposed determination that the Pittsburgh Area attained the 2006 24-hour PM<sub>2.5</sub> NAAQS which discussed the application of the 1997 PM<sub>2.5</sub> Implementation Rule's Clean Data Policy provisions to a determination of attainment for the 2006 standard). In addition, although the D.C. Circuit remanded the 1997 PM<sub>2.5</sub> Implementation Rule to EPA, the D.C. Circuit's decision in *NRDC v. EPA* related to EPA's use of subpart 1 for CAA Part D requirements instead of subpart 1 and subpart 4, and the decision did not cast doubt on EPA's interpretation of certain statutory provisions underlying the Clean Data Policy nor cast any doubt on EPA's Clean Data Policy interpretation in the 1997 PM<sub>2.5</sub> Implementation Rule. *See NRDC v. EPA*, 706 F.3d 428.

---

<sup>3</sup> EPA subsequently withdrew the implementation guidance on June 6, 2013 subsequent to the D.C. Circuit's decision in *NRDC v. EPA*. EPA's June 6, 2013 withdrawal memorandum is available at <http://www.epa.gov/ttn/naaqs/pm/pdfs/implementationguidancewithdrawmemo.pdf>.

The statutory provisions in subpart 4 require EPA, among other things, to classify nonattainment areas for the PM<sub>2.5</sub> NAAQS based on the severity of their pollution problem. Under EPA's prior approach to implementing the 1997 and 2006 PM<sub>2.5</sub> standards according to subpart 1, EPA was not required to, and thus did not, identify any classifications for areas designated nonattainment. In contrast, subpart 4 of the CAA, at section 188, provides that all areas designated nonattainment are initially classified "by operation of law" as "Moderate" nonattainment areas, and they remain classified as Moderate nonattainment areas unless and until EPA later reclassifies them as Serious nonattainment areas or EPA determines that an area has not attained the PM<sub>2.5</sub> NAAQS by the area's applicable attainment date. On April 25, 2014, EPA finalized a rule identifying the classification of all PM<sub>2.5</sub> areas currently designated nonattainment for the 1997 and 2006 PM<sub>2.5</sub> NAAQS as "Moderate," consistent with subpart 4 of the CAA. *See* 79 FR 31566 (June 2, 2014). Consequently, the Liberty-Clairton Area was classified as Moderate for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

## **B. Determination of Attainment of the 2006 24-hour NAAQS**

Under section 188(c)(1) of the CAA, a Moderate nonattainment area shall attain the PM<sub>2.5</sub> NAAQS as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation to nonattainment. Because the designation of nonattainment areas for the 2006 24-hour PM<sub>2.5</sub> NAAQS became effective on December 14, 2009, the presumptive sixth year attainment date for Moderate nonattainment areas would be no later than December 2015.

To determine attainment with a NAAQS, EPA commonly uses three calendar years of complete air quality data available for the nonattainment area. The criteria for determining if an area is



attaining the 2006 24-hour PM<sub>2.5</sub> NAAQS are set out in 40 CFR 50.13 and appendix N. In summary, the 2006 24-hour PM<sub>2.5</sub> NAAQS is met when the 24-hour design value is less than or equal to 35 µg/m<sup>3</sup>. Three years of valid annual 98<sup>th</sup> percentile 24-hour average PM<sub>2.5</sub> concentration values are required to produce a valid 24-hour PM<sub>2.5</sub> design value. A year meets data completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data.

### **C. EPA's Clean Data Policy**

Under EPA's longstanding Clean Data Policy interpretation, a determination that a nonattainment area has attained the NAAQS suspends the state's obligation to submit attainment-related planning requirements of the CAA for so long as the area continues to attain the standard.<sup>4</sup> These include requirements to submit an attainment demonstration, RFP, RACM, and contingency measures, because the purpose of these provisions is to help reach attainment, a goal which has already been achieved.

EPA incorporated its Clean Data Policy interpretation in both its 8-Hour Ozone Implementation Rule in 40 CFR 51.918 and in its 1997 PM<sub>2.5</sub> Implementation Rule in 40 CFR 51.1004(c). *See* 72 FR 20585, 20665 (April 25, 2007). While the D.C. Circuit in its January 4, 2013 decision remanded the 1997 PM<sub>2.5</sub> Implementation Rule, the Court did not address the merits of that regulation regarding our Clean Data Policy in 40 CFR 51.1004(c), nor cast any doubt on EPA's

---

<sup>4</sup> For an EPA memorandum discussing interpretation that three years of data showing attainment of a NAAQS suspends requirements to submit certain attainment plan SIP requirements including those in section 172 of the CAA, see *Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard*, EPA Memorandum from John S. Seitz, Director, Office of Air Quality Planning Standards, May 10, 1995 (Seitz Memorandum), located at <http://www.epa.gov/ttn/caaa/t1/memoranda/clean15.pdf>.

existing interpretation of the statutory provisions for the Clean Data Policy. In this section of the proposed rulemaking action, EPA is addressing the effect of a final determination of attainment under the Clean Data Policy for the Liberty-Clairton Area, as a moderate nonattainment area under subpart 4.

## **1. Background on Clean Data Policy**

Over the past two decades, EPA has consistently applied its “Clean Data Policy” interpretation to attainment-related provisions of subparts 1, 2 and 4. The Clean Data Policy is the subject of several EPA memoranda such as the Seitz Memorandum and regulations. In addition, numerous individual rulemakings published in the Federal Register have applied the interpretation to a spectrum of NAAQS, including the 1-hour and 1997 ozone, coarse particulate matter (PM<sub>10</sub>), PM<sub>2.5</sub>, carbon monoxide (CO) and lead (Pb) standards. The D.C. Circuit has upheld the Clean Data Policy interpretation as embodied in EPA’s 1997 8-Hour Ozone Implementation Rule, 40 CFR 51.918.<sup>5</sup> *NRDC v. EPA*, 571 F. 3d 1245 (DC Cir. 2009). Other U.S. Courts of Appeals that have considered and reviewed EPA’s Clean Data Policy interpretation have upheld it and the rulemakings applying EPA’s interpretation. *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, N. 04-73032 (9th Cir. June 28, 2005) (memorandum opinion); and *Latino Issues Forum, v. EPA*, Nos. 06-75831 and 08-71238 (9th Cir.), Memorandum Opinion, March 2, 2009.

In light of the January 4, 2013 D.C. Circuit decision in *NRDC v. EPA*, EPA’s Clean Data Policy

---

<sup>5</sup> “EPA’s Final Rule to implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 2 (Phase 2 Final Rule).” See 70 FR 71612, 71645-46 (November 29, 2005).

interpretation under subpart 4 is set forth here, for the purpose of identifying the effects of a determination of attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS for the Liberty-Clairton Area. EPA has previously articulated its Clean Data Policy interpretation under subpart 4 in implementing the PM<sub>10</sub> standard. *See, e.g.*, 75 FR 27944 (May 19, 2010) (determination of attainment of the PM<sub>10</sub> standard in Coso Junction, California); 71 FR 6352 (February 8, 2006) (Ajo, Arizona Area); 71 FR 13021 (March 14, 2006) (Yuma, Arizona Area); 71 FR 40023 (July 14, 2006) (Weirton, West Virginia Area); 71 FR 44920 (August 8, 2006) (Rillito, Arizona Area); 71 FR 63642 (October 30, 2006) (San Joaquin Valley, California Area); 72 FR 14422 (March 28, 2007) (Miami, Arizona Area).

EPA has recently articulated as well its Clean Data Policy interpretation under subpart 4 in implementing the PM<sub>2.5</sub> standard, including specifically the 2006 24-hour PM<sub>2.5</sub> NAAQS. *See* 79 FR 25014 (May 2, 2014) (determination of attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS in Pittsburgh-Beaver Valley Area, Pennsylvania) and 78 FR 63881 (October 25, 2013) (determination of attainment of the 1997 annual PM<sub>2.5</sub> standard in Liberty-Clairton Area, Pennsylvania). Thus, EPA has established that, under subpart 4, an attainment determination suspends the obligations to submit an attainment demonstration, RACM, RFP contingency measures, and other measures related to attainment.

## **2. Application of the Clean Data Policy to Attainment-Related Provisions of Subpart 4**

EPA initially set forth at length its rationale for applying the Clean Data Policy to PM<sub>10</sub> under subpart 4 in EPA's proposed and final rulemaking actions determining that the San Joaquin Valley nonattainment area attained the PM<sub>10</sub> standard. The Ninth Circuit upheld EPA's final rulemaking, and specifically EPA's Clean Data Policy, in the context of subpart 4. *Latino Issues*

*Forum v. EPA*, supra. Nos. 06-75831 and 08-71238 (9th Cir.), Memorandum Opinion, March 2, 2009. In rejecting the petitioner’s challenge to the Clean Data Policy under subpart 4 for PM<sub>10</sub>, the Ninth Circuit stated, “As the EPA explained, if an area is in compliance with PM<sub>10</sub> standards, then further progress for the purpose of ensuring attainment is not necessary.”

The general requirements of subpart 1 apply in conjunction with the more specific requirements of subpart 4, to the extent they are not superseded or subsumed by the subpart 4 requirements. Subpart 1 contains general air quality planning requirements for areas designated as nonattainment. *See* section 172(c). Subpart 4, itself, contains specific planning and scheduling requirements for PM<sub>10</sub> nonattainment areas, and under the Court’s January 4, 2013 decision in *NRDC v. EPA*, these same statutory requirements also apply for PM<sub>2.5</sub> nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See* “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” (57 FR 13498, April 16, 1992) (General Preamble). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent “subsumed by, or integrally related to, the more specific PM<sub>10</sub> requirements.” *Id.* These subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

EPA has long interpreted the provisions of subpart 1 (sections 171 and 172) as not requiring the

submission of RFP for an area already attaining the ozone NAAQS.<sup>6</sup> For an area that is attaining, showing that the state will make RFP towards attainment “will, therefore, have no meaning at that point.” *Id.* See also 71 FR 40952 and 71 FR 63642 (proposed and final determination of attainment for San Joaquin Valley); 75 FR 13710 and 75 FR 27944 (proposed and final determination of attainment for Coso Junction).

Section 189(c)(1) of subpart 4 states that:

“Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section [section 171(1)] of this title, toward attainment by the applicable date.”

With respect to RFP, section 171(1) states that, for purposes of part D, RFP “means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.” Thus, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of sections 182(b) and (c), or the specific RFP requirements for PM<sub>10</sub> areas of part D, subpart 4, section 189(c)(1), the stated purpose of RFP is to ensure attainment by the applicable attainment date.

Although section 189(c) states that revisions shall contain milestones which are to be achieved until the area is redesignated to attainment, such milestones are designed to show reasonable

---

<sup>6</sup> See the Seitz Memorandum.

further progress “toward attainment by the applicable attainment date,” as defined by section 171. Thus, it is clear that once the area has attained the standard, no further milestones are necessary or meaningful. This interpretation is supported by language in section 189(c)(3), which mandates that a state that fails to achieve a milestone must submit a plan that assures that the state will achieve the next milestone or attain the NAAQS if there is no next milestone. Section 189(c)(3) assumes that the requirement to submit and achieve milestones does not continue after attainment of the NAAQS.

In the General Preamble, EPA noted with respect to section 189(c) that the purpose of the milestone requirement “is ‘to provide for emission reductions adequate to achieve the standards by the applicable attainment date’ (H.R. Rep.No. 490 101st Cong., 2d Sess. 267 (1990)).” (57 FR 13539, April 16, 1992). If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled.<sup>7</sup>

Similarly, the requirements of section 189(c)(2) with respect to milestones no longer apply so long as an area has attained the standard. Section 189(c)(2) provides in relevant part that:

“Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a

---

<sup>7</sup> Thus, EPA believes that it is a distinction without a difference that section 189(c)(1) speaks of the RFP requirement as one to be achieved until an area is “redesignated attainment,” as opposed to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone nonattainment area RFP requirements in sections 182(b)(1) or 182(c)(2), which refer to the RFP requirements as applying until the “attainment date,” since section 189(c)(1) defines RFP by reference to section 171(1) of the CAA. Reference to section 171(1) clarifies that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2), the PM-specific requirements may only be required “for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.” 42 U.S.C. section 7501(1). As discussed in the text of this rulemaking, EPA interprets the RFP requirements, in light of the definition of RFP in section 171(1), and incorporated in section 189(c)(1), to be a requirement that no longer applies once the standard has been attained.

demonstration . . . that the milestone has been met.”

Where the area has attained the standard and there are no further milestones, there is no further requirement to make a submission showing that such milestones have been met. This is consistent with the position that EPA took with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the Seitz Memorandum with respect to the requirements of section 182(b) and (c). In the Seitz Memorandum, EPA also noted that section 182(g), the milestone requirement of subpart 2, which is analogous to provisions in section 189(c), is suspended upon a determination that an area has attained. The Seitz Memorandum, in citing additional provisions related to attainment demonstration and RFP requirements, stated:

“Inasmuch as each of these requirements is linked with the attainment demonstration or RFP requirements of section 182(b)(1) or 182(c)(2), if an area is not subject to the requirement to submit the underlying attainment demonstration or RFP plan, it need not submit the related SIP submission either.”

*See* Seitz Memorandum at 5.

With respect to the attainment demonstration requirements of section 172(c) and section 189(a)(1)(B) in subpart 4, an analogous rationale leads to the same result. Section 189(a)(1)(B) requires that the plan provide for “a demonstration (including air quality modeling) that the [SIP] will provide for attainment by the applicable attainment date . . .” As with the RFP requirements, if an area is already monitoring attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve

attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble, and the section 182(b) and (c) requirements set forth in the Seitz Memorandum. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since “attainment will have been reached.” 57 FR 13564.

Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of section 172(c)(9). EPA has interpreted the contingency measure requirements of section 172(c)(9)<sup>8</sup> as no longer applying when an area has attained the standard because those “contingency measures are directed at ensuring RFP and attainment by the applicable date.” *See* 57 FR 13564 and Seitz Memorandum, pp. 5-6.

Section 172(c)(9) provides that SIPs in nonattainment areas:

“shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or [EPA]. “

The contingency measure requirement is inextricably tied to the reasonable further progress and attainment demonstration requirements. Contingency measures are implemented if reasonable further progress targets are not achieved, or if attainment is not realized by the attainment date. Where an area has already achieved attainment by the attainment date, it has no need to rely on

---

<sup>8</sup> *See* section 182(c)(9) for ozone.



contingency measures to come into attainment or to make further progress to attainment. As EPA stated in the General Preamble: “The section 172(c)(9) requirements for contingency measures are directed at ensuring RFP and attainment by the applicable date.” *See* 57 FR 13564. Thus these requirements no longer apply when an area has attained the standard.

Both sections 172(c)(1) and 189(a)(1)(C) require “provisions to assure that reasonably available control measures” (i.e., RACM) are implemented in a nonattainment area. The General Preamble, (57 FR at 13560, April 16, 1992), states that EPA interprets section 172(c)(1) so that RACM requirements are a “component” of an area's attainment demonstration. Thus, for the same reason the attainment demonstration no longer applies by its own terms, the requirement for RACM no longer applies. EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable further progress or to attainment. General Preamble, 57 FR 13498. Thus, where an area is already attaining the standard, no additional RACM measures are required.<sup>9</sup> EPA is interpreting section 189(a)(1)(C) consistent with its interpretation of section 172(c)(1).

The suspension of the obligations to submit SIP revisions concerning these RFP, attainment demonstration, RACM, contingency measures and other related requirements exists only for as long as the area continues to monitor attainment of the standard. If EPA determines, after notice-and-comment rulemaking, that the area has monitored a violation of the NAAQS, the basis for the requirements being suspended would no longer exist. In that case, the area would again be

---

<sup>9</sup> EPA's interpretation that the statute requires implementation only of RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit in *Sierra Club v. EPA*, 314 F.3d 735, 743-745 (5th Cir. 2002) and by the United States Court of Appeals for the DC Circuit in *Sierra Club v. EPA*, 294 F.3d 155, 162-163 (DC Cir. 2002).

subject to a requirement to submit the pertinent SIP revision or revisions and would need to address those requirements. Thus, a final determination that the area need not submit one of the pertinent SIP submittals amounts to no more than a suspension of the requirements for so long as the area continues to attain the standard. Only if and when EPA redesignates the area to attainment would the area be relieved of these submission obligations. Attainment determinations under the Clean Data Policy do not shield an area from obligations unrelated to attainment in the area, such as provisions to address nonattainment area permitting requirements, emission inventory requirements, and pollution transport. *See* 79 FR 77911 (December 29, 2014) (discussion of remaining attainment plan SIP requirements in CAA section 172(c) in the final determination of attainment rulemaking for the Lyons, Pennsylvania lead nonattainment area).

For this proposed rulemaking action, EPA has evaluated PM<sub>2.5</sub> air quality data to propose to determine that the Liberty-Clairton Area is attaining the 2006 24-hour PM<sub>2.5</sub> NAAQS.

### **III. EPA's Evaluation of the Liberty-Clairton PM<sub>2.5</sub> Air Quality Data**

The Allegheny County Health Department (ACHD) submitted quality-assured and certified air quality monitoring data into the EPA Air Quality System (AQS) database for the 2012-2014 monitoring period. There are two PM<sub>2.5</sub> monitors in the Liberty-Clairton Area – one in Liberty Borough and one in the City of Clairton. Both monitors had complete data for all quarters in the calendar years 2012 through 2014.

This proposed determination of attainment for the Liberty-Clairton Area is based on EPA's

evaluation of quality-controlled, quality assured, certified PM<sub>2.5</sub> air quality data for 2012-2014, as summarized in Table 1.

**Table 1: 2012-2014 Liberty-Clairton Area Daily PM<sub>2.5</sub> Monitoring Data & Completeness**

Monitor Name	AQS Site ID	Location	98 <sup>th</sup> Percentile			2012-2014 Design Value (µg/m <sup>3</sup> )	Complete Data?
			2012	2013	2014		
Liberty	42-003-0064	Liberty Borough	42.5	31.1	32.2	35	Yes
Clairton	42-003-3007	City of Clairton	19.2	17.1	31.2	23	Yes

As shown, the design values for both monitors in the Liberty-Clairton Area are 35 µg/m<sup>3</sup> or less for the 2012-2014 monitoring period. Thus, in accordance with EPA's requirements in 40 CFR part 50, the monitors in the Liberty-Clairton Area are showing attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS, based on the 2012-2014 quality-assured and certified air quality data, the most recent three years of data for the Area.

Based on our review of the Liberty-Clairton Area's PM<sub>2.5</sub> ambient air monitoring data, EPA proposes to determine that the Liberty-Clairton Area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS during the 2012-2014 monitoring period, in accordance with 40 CFR part 50.

Additional information on air quality data for the Liberty-Clairton Area can be found in the technical support document (TSD) prepared for this proposed action.

#### **IV. Proposed Actions**

EPA is proposing to determine, based on the most recent three years of complete quality-assured, and certified data for 2012-2014 meeting the requirements of 40 CFR part 50, appendix N, that the Liberty-Clairton Area is currently attaining the 2006 24-hour PM<sub>2.5</sub> NAAQS. In accordance with our Clean Data Policy, based upon this proposed determination of attainment, EPA also

proposes to determine that the obligation to submit the following attainment-related planning requirements for the Liberty-Clairton Area are not applicable for so long as the Area continues to monitor attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS: Subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of section 189(a)(1)(C), the RFP provisions of section 189(c), and related attainment demonstration, RACM, RFP, and contingency measure provisions requirements of subpart 1, section 172. If in the future, EPA determines after notice-and-comment rulemaking that the Liberty-Clairton Area again violates the 2006 24-hour PM<sub>2.5</sub> NAAQS, the basis for suspending these requirements would no longer exist. This proposed rulemaking action, if finalized, would not constitute a redesignation to attainment under CAA section 107(d)(3). In addition, this determination, if finalized, does not relieve the requirement for Pennsylvania to submit for the Liberty-Clairton Area an emissions inventory as required by CAA section 172(c)(3) or to have a nonattainment area permitting program pursuant to CAA sections 172(c)(5) and 173. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, proposing to determine that the Liberty-Clairton Area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: April 10, 2015

William C. Early, Acting  
Regional Administrator,  
Region III.

[FR Doc. 2015-09416 Filed: 4/22/2015 08:45 am; Publication Date: 4/23/2015]